

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

METRO ONE TELECOMMUNICATIONS,  
INC.,

Plaintiff,

v.

STARBAK COMMUNICATIONS, INC.,

Defendant.

No. C04-425Z

ORDER

Having reviewed Defendant's motion for summary judgment of non-infringement, docket no. 36, Plaintiff's motion for summary judgment on trademark infringement and unfair competition, docket no. 48, and the responses thereto, docket nos. 55 and 59, the Court enters the following Order.

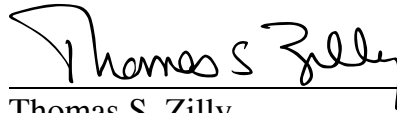
(1) Summary Judgment is only appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). In trademark infringement cases, the Ninth Circuit has cautioned that "district courts should grant summary judgment motions sparingly, as [a] careful assessment of the pertinent factors that go into determining likelihood of confusion usually requires a full record." Thane Int'l, Inc. v. Trek Bicycle Corp., 305 F.3d 894, 901-02 (9th Cir. 2002). Based on a review of the Sleekcraft factors, the Court concludes that there are material issues of fact that preclude summary judgment. The issue of whether there exists a "likelihood of confusion"

1 between Plaintiff's STARBACK marks and Defendant's STARBAK marks will require a  
2 jury trial. See AMF, Inc. v. Sleekcraft Boats, 599 F.2d 341, 348-49 (9th Cir. 1979).  
3 Accordingly, both motions for summary judgment, docket nos. 36 and 48, are DENIED.

4 (2) Plaintiff's motion to strike, docket no. 55, is GRANTED.

5 (3) To the extent the parties have not yet done so, the Court orders mediation to be  
6 completed in this matter no later than November 30, 2005.

7 DATED this 18th day of October, 2005.

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10 Thomas S. Zilly  
11 United States District Judge  
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